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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/095,630    06/10/98    TOBINICK    D    TOBINICK3.00

QM32/0831

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EXAMINER

GIBSON, R

ART UNIT

PAPER NUMBER

3739

*2*

DATE MAILED:

08/31/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/095,630

Applicant(s)  
Tobinick

Examiner  
Roy Gibson

Group Art Unit  
3739



☒ Responsive to communication(s) filed on Jun 10, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "said beam diameter" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckhouse et al. (5,885,273).

As to claim 1, Eckhouse et al. disclose a method of hair removal of a patient using a flashlamp apparatus having a flashlamp, a sequence control device and an optical delivery system, comprising the steps of:

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a) controlling the flashlamp to emit a series of pulses of incoherent light energy, each having a pulse width in the range of 5-200 msec (which overlaps the range of 0.5-10 ms): see col. 3, lines 56-67 and col. 4, lines 30-49);

b) transmitting the series of pulses of incoherent light energy through the optical delivery system to the same spot on the skin of the patient (Figures 3-6 and col. 5, lines 12-36 and col. 6, line 10-col. 7, line 8);

c) irradiating the same spot on the skin containing the hair with the series of sequential pulses of incoherent light energy transmitted through the optical delivery system from the flashlamp (Figures 3-6 and col. 5, lines 12-36 and col. 6, line 10-col. 7, line 8); and

d) pulsing the flashlamp at least two times through the optical delivery system at a wavelength in the range of 500 -1300 nm (which overlaps the range of 550-1200 nm: see col. 5, lines 37-67), at a power level in the range of 10-100 J/cm<sup>2</sup> (which overlaps the range of 4-25 J/cm<sup>2</sup>) , each pulse having a duration in the range of 5-200 msec (which overlaps the range of 0.5-10 msec), and a delay between pulses in the range of 5-200 msec (which overlaps the range of 1-10 msec), and a beam diameter on the treatment area of at least 16 mm (an area of at least 2 cm<sup>2</sup> and which is in the range of 4-50 mm: see claim 4 and col. 7, lines 9-25).

As to claim 2, Eckhouse et al. disclose a method of hair removal of a patient using a flashlamp apparatus having a flashlamp, a sequence control device and an optical delivery system, comprising the steps of:

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a) controlling the flashlamp to emit a series of pulses of incoherent light energy, each having a pulse width in the range of 5-200 msec (which overlaps the range of 0.5-10 ms: see col. 3, lines 56-67 and col. 4, lines 30-49).

b) transmitting the series of pulses of incoherent light energy through the optical delivery system to the same spot on the skin of the patient (Figures 3-6 and col. 5, lines 12-36 and col. 6, line 10-col. 7, line 8);

c) irradiating the same spot on the skin containing the hair with the series of sequential pulses of incoherent light energy transmitted through the optical delivery system from the flashlamp (Figures 3-6 and col. 5, lines 12-36 and col. 6, line 10-col. 7, line 8); and

d) pulsing the flashlamp to have a delay between the pulses less than the thermal relaxation time (TRT) of the patient's hair and skin in order to remove the patient's hair and in order to avoid burning of the patient's skin, the pulse delay being in the range of 5-200 msec (which overlaps values less than 10 msec; see col. 4, lines 30-49).

As to claim 3, Eckhouse et al. disclose that the pulse width is 5-200 msec, which overlaps the range of 2-6 msec (col. 4, lines 30-49).

As to claim 4, Eckhouse et al. disclose that the delay between pulses is 5-200 msec, which overlaps the range of 1-8 msec (col. 4, lines 30-49).

As to claim 5, Eckhouse et al. disclose that the power level has a range of 10-100 J/cm<sup>2</sup> which overlaps the range of 4-25 J/cm<sup>2</sup>, (col. 6, line 29-30).

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As to claim 6, Eckhouse et al. disclose a beam diameter on the treatment area of at least 16 mm (an area of at least 2 cm<sup>2</sup> and which is in the range of 4-50 mm: see claim 4 and col. 7, lines 9-25).

As to claim 8, Eckhouse et al. disclose the delay between pulses has a range of 0.1-100 msec, which overlaps the range of 3-6 msec for a sequence of three pulses (col. 7, lines 9-25).

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse et al. ('273). Eckhouse et al. lack disclosure that the delay between pulses has a range of 2-4 msec in duration for a sequence of two pulses. However, since no power level is recited in claim 2 from which claim 7 depends, the examiner maintains that it would have been obvious to one of ordinary skill in the art to determine, by simple experimentation based on the disclosure by Eckhouse et al., that for a particular power level, a pulse width from 0.5-10 msec and a pulse delay less than 10 msec, that the proper delay between pulses for a sequence of two pulses would be in the range of 2-4 msec.

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*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fullmer et al. ('274) disclose an apparatus and method for hair removal with a flashlamp, pulsed light output, pulse width from 10-1000 msec, etc., but lack the specific disclosure of the delay time between pulses; Rohr ('978) discloses a method and apparatus for photoepilation but lacks the disclosure of a pulse width or delay between pulses; and Eckhouse ('751) discloses a method and apparatus for therapeutic electromagnetic treatment or for coagulating blood in a blood vessel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Gibson whose telephone number is (703) 308-3520. The examiner can normally be reached on Monday-Friday from 9 am - 4 pm.

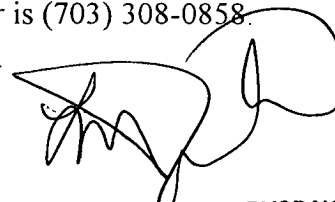
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Linda Dvorak, can be reached on (703) 308-0994. The fax phone number for this Group is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

*RDG*

RDG

August 25, 1999



LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700